COMMONWEALTH OF MASSACHUSETTS
before the
DEPARTMENT OF PUBLIC UTILITIES

Notice of Inquiry/Rulemaking Establishing The Procedures To Be Followed In Electric Industry Restructuring By Electric Companies	)))))	**D.P.U. 96-100**

COMMENTS OF THE ATTORNEY GENERAL

Respectfully submitted,

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I. INTRODUCTION

Pursuant to its March 15, 1996 "Order Commencing Notice of Inquiry ('NOI')/ Rulemaking and Setting a Procedural Schedule," the Attorney General submits these comments on the five "restructuring plans" that have been filed with the Massachusetts Department of Public Utilities ("Department").[1] Pursuant to G.L. c. 12, § 11E, the Attorney General is participating in this proceeding to represent the interests of consumers of electricity within the Commonwealth. These comments are not intended to be and should not be construed to be a "restructuring plan." Instead, as contemplated under the terms of the Department's procedural order and the page limitation set forth therein, these comments articulate, in the context of a necessarily incomplete review of the filings made to date, the Attorney General's broad impressions of what is good, what is not so good, and what is missing in those filings. Consistent with that procedural order, the Attorney General will make his detailed recommendations on May 24, after having reviewed the Department's May 1 explanatory statement and draft regulations. For the convenience of the Department, copies of studies addressing competitive market structure and "strandable" cost valuation issues which were prepared recently for the Office of the Attorney General are being

[1] The five restructuring plans were submitted by: Boston Edison Company ("BECo"); Eastern Edison Company ("EECo"); Massachusetts Electric Company ("MECo"); Western Massachusetts Electric Company ("WMECo") and the Division of Energy Resources ("DOER").

provided simultaneous with this filing.

II. OVERVIEW

The Attorney General submits that the public interest requires a restructured electric industry in which each customer has the broadest possible choice of suppliers and services. This should include not only generation, but other services such as metering, conservation and renewable power development. The prerequisite for such an industry is a robust competitive market, operating under well understood and enforced rules, *i.e.*, a well functioning, efficient market. In such an industry, no single supplier can exercise control over the market price and no competitor can exercise any unfair advantage in the battle for a customer's business. Moreover, in such an industry, consumers will have adequate information with which to make informed purchase/contracting decisions with reasonable confidence that their expectations will be met.

Although the results of a rigorous study performed for the Office of the Attorney General indicate that the current distribution of ownership of generation assets in New England does not now pose any significant threat of anti-competitive market power (*see* Hartman & Tabors, *The Market for Power in New England: The Competitive Implications of Restructuring*), that study also confirms the obvious conclusion that much needs to be done to create a well functioning, efficient market for power. In particular, the Attorney General submits that creating such a market in New England will require a major transformation -- ultimately, the complete replacement -- of the current control and operation of NEPOOL. While NEPOOL has served New England well, a competitive market for electric power will require significant changes, not only in the way in which generating plant operation decisions and planning are conducted, but also in the way in which the regional transmission grid is operated. Appropriate rules for unit scheduling and bidding as well as pricing for balancing and transmission services will be critical building blocks in any successful restructuring.

It is important to emphasize, however, that the Department does not now have the jurisdiction necessary to put all of these overarching elements of a new market into place. In light of the obvious benefits from participation in a regional market, restructuring should not proceed as if there were some distinct "Massachusetts market" for power. Massachusetts is part of a regional market that, at a minimum, encompasses all of New England. Given its exclusive jurisdiction over rates for inter-state transmission of electric power as well as the tariffs of interstate power pools, it should be plain that the FERC will ultimately have a very important role in the resolution of the larger "poolco" v. "bilateral transactions" and the "ISO" v. "NEPOOL Plus" debates, as well as a determinative role in resolving the many lesser implementation detail issues that will necessarily follow. Thus, while the Attorney General urges the Department to adopt an approach to restructuring that incorporates or is at least consistent with a market based upon bilateral transactions and the operation of the transmission grid by an "Independent System Operator," the focus of these comments is on matters that are more fully within the Department's exclusive jurisdiction.

In particular, these comments address the following six broad issues: market power, "strandable costs," consumer protection, rate unbundling, performance based distribution rates, and environmental protection/demand side management.

III. MARKET POWER

It is axiomatic that any restructuring of the electric power industry to displace rate regulation with a free market for power sales must be founded upon a structure that includes a genuinely competitive market, *i.e.*, a market in which no single seller can exercise control over price. As is set forth in detail in the accompanying study of the New England market for power, the existing distribution of control over generating facilities is consistent with a competitive market. In the argot of antitrust analysis, horizontal market power does not appear to exist currently in the generation sector.[2] However, it is also plain that there are very real horizontal

[2] The Department should, however, closely monitor market concentration in generation in New England to ensure that market power does not evolve in the future. Mergers and asset purchases could have an impact on competitive conditions.

market power issues in the transmission sector and that the vertically integrated nature of most distribution companies also creates vertical market power issues. Thus, for the reasons set forth in the Hartman & Tabors study, the Attorney General joins the DOER in calling for a transformation of NEPOOL into an entity, independent from control by any supplier(s) of power, that will be charged with the efficient operation of the regional transmission grid. Moreover, while the Attorney General does not now take the position that generation divestiture is absolutely necessary to address vertical market power concerns, he does submit that these concerns are quite real and must, at a minimum, be addressed through some affiliate "code of conduct." *Compare Re: Standards of Conduct for Local Distribution Companies and Their Gas Marketing Affiliates*, 167 P.U.R.4th 237 (N.J.B.P.U., 1996).

IV. "STRANDABLE COSTS"

In its August 16, 1995 order on electric utility restructuring (D.P.U. 95-30), the Department indicated that certain principles will guide the transition to a competitive electric industry structure. The Department stated that:

> Utilities should have a reasonable opportunity to recover net, non-mitigatable, stranded costs associated with commitments previously incurred pursuant to their legal obligations to provide electric service. **Utilities must take all practicable measures to mitigate stranded costs during the transition. The amount of stranded costs should be determined on a net basis that reflects all resources in a utility's portfolio (<u>i.e.</u>, including those that positively or negatively vary from the market price for electricity).** Any stranded cost recovery mechanisms should provide for a non-discriminatory charge that cannot be bypassed. Stranded costs should be recovered for a period of time no longer than ten years.

Electric Industry Restructuring, D.P.U. 95-30, pp. 29-30 (emphasis added). Rather than submit plans consistent with this principle, the utility proposals make **<u>no</u>** attempt to mitigate stranded costs and **<u>no</u>** attempt to determine stranded costs on a net basis. MECo and BECo[3] both state that the

[3] EECo includes only its nuclear plant in its stranded costs calculations, but does not "net" the "above book" market value of its fossil plants against the estimated "below book" market value of its nuclear plants. Exh. EECo Test. of Kremzier, p. 20. WMECo's plan, on the other hand, not only seeks accelerated recovery of all of its past investments, but also to recoup capital costs yet to be incurred. Importantly, no plan gives any recognition to the plain fact that the market

total undepreciated net book value of their generating plants are stranded, *i.e.,* that every past generation investment is worthless in a competitive environment. MECo Test of Jesanis; Exh. BECo- Vol.1, p. 37. In addition, with the notable exception of COMElectric, rather than state what actions they intend to take to mitigate costs, the Companies again recite their familiar chorus of an "exclusive franchise" and a "guaranteed right" to recover any above market costs.[4] *See e.g.:* MECo Legal Commentary. The Attorney General maintains that (1) there is no legal right to protection from market forces, (2) there has been no attempt by the utilities to mitigate stranded costs and determine a net amount as required by the Department,[5] and (3) there is no reliable empirical basis for any claim for "strandable cost" recovery.

If, for whatever reason, the Department is presently of the opinion that there is either some legal basis for a strandable cost claim or some possibility that utility estimates of the magnitude of their "strandable" generation assets may be accurate, the Attorney General urges the Department to proceed with great caution. Not only was the Department correct in concluding that the legal premise for any such claim was, at best, suspect, D.P.U. 95-30, Appendix B, but it also clear that their is no basis whatsoever for the factual predicate of such a claim: that past regulation by the

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value of utility transmission and distribution assets are and will continue to be above book value.

[4] Since the Department has indicated that "[a]ny claim such as confiscation of property would be premature" (D.P.U. 96-100, p. 4), at this juncture the Attorney General's comment will be limited to observing that the Department appears to have rejected already any claim of a generalized "right" to indemnification against the forces of economics and technology. *Electric Industry Restructuring*, D.P.U. 95-30, Appendix B.

[5] The Attorney General submits that the Department should be firm on this question. Before any company should be allowed to even make a request to be allowed to recover revenues or margins lost to competition, it must, at a minimum, demonstrate that it has taken every reasonable step to mitigate such losses. Every utility has an affirmative duty to mitigate any damages that flow from the termination of service by customers. This is an absolute requirement. The duty to mitigate includes not only avoidance of purchased power costs but, also such items as selling resulting excess capacity and deferring planned capacity expansion. *See Boston Edison Company*, 56 F.P.C. 3414, 3429-30 (1976), remanded on other grounds sub nom, *Town of Norwood v. Federal Energy Regulatory Commission*, 587 F.2d 1306 (D.C. Cir. 1978). The Company bears a "heavy burden of proof in this regard." *Id.* The Companies cannot be allowed to rest on their self-proclaimed "regulatory compact."

Department has constrained utility profits. *See* Attachment A. Moreover, even if their were some legal or factual basis for the claim of some “entitlement” to protection from market forces, which there is not, an independent report by Resource Insight suggests that there is no reason to believe that deregulation will result in utility generating assets being worth less rather than more than they are today. *Estimation of Market Value, Stranded Investment, and Restructuring Gains for Major Massachusetts Utilities*.[6]

Thus, the Department should postpone the decision on an award of stranded costs until a more thorough analysis can be done. In the event that it determines ultimately to allow stranded cost recovery, the Department should limit any charge to no more than $0.005/kWh and require that any claim be supported by an actual market determination of the amount by which all of the utility’s generating related assets, taken in their entirety, are less than their book value. Real numbers must be used, not estimates.

Finally, although some plans give token reference to the need to incent renegotiation by parties to existing non-utility generator contracts, the discussion does not address the plain fact that sellers under those contracts have few, if any incentives to be reasonable. Without suggesting that utilities should be given unbridled *de facto* control over the timing of entry into the market by existing non-utility generators, the Attorney General submits that the Department can and should address this imbalance in incentives. In particular, the Attorney General submits that the Department should adopt regulations precluding any entity from being certified as being eligible to

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[6] In its report, Resource Insight concluded that the likely market value of the existing generation assets (utilizing reasonable operating, cost and market price assumptions and taken as a portfolio) of individual Massachusetts electric utilities generation assets would result in little, if any, stranded cost exposure. This was true under various sets of plausible circumstances. Indeed, under the "base case," most Massachusetts electric utilities' generating assets would have a market value in excess of their book value, an excess that could exceed $3 billion collectively. Importantly, the term “stranded costs” also references decommissioning expenses which the Attorney General has already acknowledged must be addressed. In addition, it also includes “accounting” type assets, such as FAS 106 expenses (Post Retirement Benefits Other Than Pensions), which the Resource Insight study did not address. The evidence, however, is far from clear whether there will be any “net” strandable costs of this type either, after consideration of, among other things, over-funded pension plans.

sell to end users if it is a seller or is in any way affiliated with a seller under a non-utility or EWG contract that has not been modified in a manner suitable to the buyer and approved by the Department.

V.CONSUMER PROTECTION

The most remarkable omission from all of the restructuring plans filed to date is the lack of sufficient provision for ensuring the protection of consumer interests in a newly restructured world. While the plans, to varying extents, acknowledge the need for the Department to continue to supervise billing and termination, provide for continuation of special assistance programs for low income customers, as well as address the circumstance of consumers who do not elect to "choose" (*i.e.*, provide for default service[7]), greater specificity is needed in terms of the precise mechanics under which the energy requirements of small customers, lacking hourly metering capabilities, are to be served and billed. Clear mechanisms must be in place from the very onset if these customers are to be attractive the marketers, aggregators, etc who are expected to bring the benefits of competition to consumers.

Moreover, there is a striking absence of any attention to the actual rules to be applied to the anticipated competition. Rules must be in place to protect consumers -- residential and business customers, alike -- in a rapidly evolving market. Massachusetts consumers of electric service should not be required to undergo the rough transition that consumers of telecommunications services have endured. Electric bills are too important a part of the average residential or business budget to defer the questions of consumer information, "slamming," exorbitant prices, and outright consumer fraud, much less effective enforcement of rules necessary to govern market participant behavior. In the comments that follow, the Attorney General

[7] While most utility plans provide for themselves as the default supplier and DOER calls for a spot market "default service," the Attorney General submits that the Department should consider requiring utilities to solicit bids to serve the "defaulters" load. Not only would this work to lower the cost of such service, but it would also provide attractive packages of load for new entrants to serve.

addresses the broad elements of an appropriate framework to ensure the protection of consumer interests in a competitive environment.[8]

First, the Department should establish standard service bundles (*e.g.*, 500 kWh year round monthly energy with a seasonal space heating requirement) to provide consumers with "benchmarks" to facilitate informed comparison shopping. Importantly, offerings need not be limited to these standard bundles, but disclosure of the cost of the standard bundle under any package should be a required element of any marketing materials, whether brochures or mass media advertisements. While careful monitoring and consumer education will be necessary in the early stages of the transition, the Department should allow the market to determine the "best" service bundles.

Second, the Department should ensure the existence of some mechanism, whether internal to the Department or, conceivably, external within some private entity, to "certify" the qualifications of entities to sell power to end users.[9] Although the market should be left as unhindered as reasonably possible, minimal requirements will ensure an orderly and secure market at the retail level. Specifically, certification should be conditioned on some proof of financial resources -- bonding or other suitable financial arrangement -- to cover some level of pricing commitments as well as to insure against unscrupulous fly-by-night suppliers absconding with any customer deposits or prepayments. Certification should also be dependent upon the use of standard "plain language" contract forms for smaller customers, residential and business.

Finally, specific rules concerning customer choice of supplier, confirmation of that choice, and customer switching suppliers of choice will be critical in the restructuring. Given that the exercise of "choice" in a restructured electric power market is more a financial than a physical

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[8] As stated above, all plans on file with the Department provide for continuation of special programs for low income consumers as well as appropriate service termination procedures. The Attorney General agrees that these are essential features of any restructuring plan, but will defer until May 24 any detailed recommendations on their implementation in restructuring.

[9] Sellers would include aggregators (municipal or commercial), brokers, marketers, generators, etc.

transaction, it appears likely that proper "choice" procedures will be at least as necessary here as in the telecommunications industry. Thus, the Department must promulgate and **enforce** effective rules to make sure that Massachusetts consumers are not "slammed" to and fro in a new competitive world.

VI. RATE UNBUNDLING

In D.P.U. 95-30, the Department required utilities to unbundle their rates among the functions of generation, transmission, and distribution, and to unbundle services, including ancillary services, to the greatest extent practical. *Id.*, p. 39. With the exception of WMECo, the utility proposals have generally followed this directive and proposed separate unbundled generation, transmission and distribution rates and eliminated the fuel charge and the purchase power adjustment charge ("PPCA"). BECo Vol. 2, App. I, 1, p. 6; EECo Vol. 2, p. 6; MECo Exh. PTZ-12. On the other hand, WMECo has proposed to combine its distribution and transmission charges and to retain its fuel charge. WMECo Exh. CLR-2. Moreover, its so-called "universal service" charge is a combination of its stranded cost charge and purported "public policy" costs. *Id.*; WMECo Test. of Roncaioli, p. 13.

The Attorney General submits that there should be a single approach for all companies. Consistent with the Department's directive in D.P.U. 95-30, the unbundling of rates must be real and distinct; distribution, transmission and generation costs must be functionally separate.[10] Fuel charges and the PPCAs should be eliminated. If the Department does, notwithstanding the lack of any compelling legal or factual rationale, determine to allow a "stranded cost" charge, it should be labeled as such, collected on an energy basis, and appear separately on consumer bills.[11]

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[10] BECo proposes to eliminate the New Performance Adjustment Clause ("NPAC"), and place it into the distribution charge. BECo Vol. 1, p. 29. The NPAC is technically a generation component. While BECo may possibly make a claim that NPAC belongs in the access charge as a residual, it simply does not belong in the distribution charge.

[11] While the Attorney General does agree with former Chairman Gordon's observation that a "stranded cost" charge is, in effect, a "tax" and its collection should be done to minimize its impact on decision-making, there is much to recommend an energy based charge at this time. Not

Further, the demand side management ("DSM") charge should be included in the distribution charge since future DSM programs will be pursued as part of the distribution function.

The Attorney General also submits that there should be a single approach to cost allocation. For all companies, the allocation must be real and distinct along functional lines, and amongst rate classes. It must also be consistent with the Department's goals of efficiency, simplicity, continuity, fairness and earnings stability. *Massachusetts Electric Company*, D.P.U. 85-146, pp. 6-7 (1985). In accordance with Department precedent, there must be no cost shifting.[12]

For example, in a restructured electricity system, administrative and general expenses must be properly allocated to the correct, respective function; either distribution, transmission or generation. With respect to the allocation of stranded costs, if any, amongst classes, such allocation should be done in a manner similar to the way generation costs are allocated today as approved by the Department in the each company's last rate case. Adoption of this method of allocation would simplify the process and avoid disputes on this issue.

With respect to distribution costs, the Department has approved the use of the class NCP allocator for distribution related costs.[13] *Massachusetts Electric Company*, D.P.U. 95-40, pp. 122-

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only were most of these purportedly “strandable cost” incurred to accomplish promised energy, not capacity savings, but there are several practical problems with any “fixed charge” approach. First, it is unfair and impractical to charge every customer (or every customer in a rate class) the same amount, since more of the stranded costs were undertaken for the larger customer. Second, recovering the transition costs through energy charges will avoid deceptively low energy rates during the transition period. Third, given that customers do move in and out of service territories as well as change addresses within service territories, it would impractical to allocate a share of stranded cost to each customer based on base-year consumption.

[12] As part of its plan, WMECo openly proposes to reduce the revenue responsibility of large demand manufacturing customers (greater than 350 kilowatts), and shift this revenue responsibility to residential and enterprise market customers (current customers with demands less than 350 kilowatts), thereby increasing the rates of these customers. WMECo Test. of Roncaioli, pp. 8-9. This shift of revenue responsibility on the "backs" of residential customers and small commercial customers is an obvious violation of recent Department orders. *Massachusetts Electric Company*, D.P.U. 95-40, pp. 142-143 (1995); *Boston Edison Company*, February 28, 1995 Letter Order. Clearly, this shift and increase in rates for some customers would create a form of "class warfare" and must not be allowed.

[13] All four utilities propose using the class NCP allocator for distribution related costs. *See* BECo Vol. 1, p. 28; EECo Vol. 2, p. 8; MECo Test. of Zschokke, pp. 10-11; WMECo Test. of

124 (1995); *Western Massachusetts Electric Company*, D.P.U. 90-300, p. 51 (1990); *Commonwealth Electric Company*, D.P.U. 89-114/90-331/91-80, pp. 234-235 (1991); *Cambridge Electric Light Company*, D.P.U. 87-221-A, pp. 26-27, 32 (1988). Therefore, to simplify the process and avoid disputes, the Department's proposed rules should contain a provision requiring that the utilities use a class diversified NCP allocator in allocating distribution related costs. The Department should require utilities to use step-down transformer and secondary line demand allocators that properly reflect each class' diversity of equipment use as well as economies of scale. *See Massachusetts Electric Company*, D.P.U. 95-40, p. 124.

Finally, with respect to the allocation of transmission costs, such allocation may not be necessary if transmission is charged to suppliers or marketers rather than the distribution company. If transmission is charged to the distribution company, then transmission charges should be allocated 50 percent on peak load and 50 percent on energy.

VII. PERFORMANCE BASED RATEMAKING

In its August, 1995 order, the Department suggested that all restructuring plans include performance based ratemaking proposals. Notwithstanding general agreement with the argument that consideration of any multi-year, price caps type performance based ratemaking proposal should be deferred until after the first round of restructuring, the Attorney General recommends that the Department can and should adopt regulations calling for interim incentive regulation schemes. In particular, the Attorney General submits that some bench marking approach, linked to rigorous service quality standards, similar in form to that proposed by Massachusetts Electric Company can and should be adopted in the interim. Without endorsing any of the particular formulae, adjustments, measures or results included in the the Massachusetts Electric proposal, the Attorney General would support an interim bench marking approach that would allow a company, that maintained its service quality, to increase it distribution service rates by one quarter

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Roncaioli, p. 44.

of the amount by which it reduced the existing difference between its rates and the unadjusted national average. This is more consistent with the Department's earlier findings on the appropriate design of an incentive ratemaking mechanism. *Massachusettts Electric Company*, D.P.U. 95-40-A, pp. 16-17.

VIII. ENVIRONMENTAL REGULATION AND DEMAND SIDE MANAGEMENT

The Attorney General submits that Massachusetts should not abandon the environmental gains of the past decade in any blind pursuit of lower rates. In D.P.U. 95-30, the parties and the Department acknowledged that the potential environmental impacts of restructuring in Massachusetts are important and must not be ignored. Older plants that are exempt from newer emissions limitations should not be allowed to compete unfairly against newer and cleaner units since reducing the emissions from older sources is critical to the region's attainment of compliance with current and future environmental laws. The companies' plans give only token attention to the air quality impacts of moving to a market-driven generation system allowing open access. They lack the specificity necessary for a full and meaningful evaluation of how our air will be impacted by locally generated and imported air emissions. Only the plan offered by the DOER contains a set of recommendations that, if implemented, likely would improve local air quality.

In its March 15, 1996, Order in this docket, the Department identified "environmental regulation" as within the scope of the NOI/Rulemaking, and indicated that in areas where the Department has no jurisdiction or shared jurisdiction, the Department would make recommendations to the utilities and the appropriate legislative and regulatory authorities. DPU 96-100, pp. 5-6. Careful study of restructuring's impact on air emissions is essential to achieving fair and environmentally beneficial competition in the market place. The companies' plans are wholly inadequate to permit the Department to effectively promulgate regulations, and the Department should accordingly require additional record information on the environmental impacts of restructuring.[14] As part of its fact finding, the Department should require adequate information to allow an informed evaluation of current air emissions and potential future air emissions from coal and oil units owned, operated or contracted with by Massachusetts utilities. To improve the quality of information available to the Department, it should, at a minimum, require that all utilities provide, on or before May 15, 1996, their current best estimates of the remaining lives of existing generating units, as well as their plans, if any, to upgrade those units to meet environmental performance standards applicable to new plants. The Department also should inquire of the Massachusetts Department of Environmental Protection and the Environmental Protection Agency about the extent to which air regulation of criteria pollutants (*e.g.*, NO_x, SO_2 and $PM_{2.5}$), air toxics (*e.g.*, mercury) and greenhouse gases (*e.g.*, CO_2) is likely to change in the foreseeable future.

The Attorney General further submits that the benefits gained in building a DSM infrastructure must not be lost as consequence of restructuring. However, the method of delivering DSM resources in the future must change. DSM and renewable resources should no longer be delivered as an optional resource to building new generation facilities but instead should be targeted toward meeting each distribution company's needs of: their electric transmission and distribution (T&D) systems (through Distributed Utility/Resources (DU or DR) Planning); their customers (through market transformation strategies and by offering customers a green energy option); and society (as discussed *supra*, by targeting DSM toward low income customers thereby making their electric bills more affordable).

Although the utility proposals discuss continuing DSM programs, they do so with more of the same past approaches in terms of the continued utilization of both Lost Base Revenues (LBR)

[14] Such analysis could well be required under the Massachusetts Environmental Policy Act, G.L. c. 30, §§ 61-62H ("MEPA"). The Executive Office of Environmental Affairs' MEPA Unit has stated that restructuring "may well have significant environmental consequences and . . . may warrant invocation of the fail-safe provision [of the MEPA regulations]" and the preparation of an environmental impact report. (Letter of June 23, 1995, from Assistant Secretary Jan H. Reitsma to Armond Cohen, Conservation Law Foundation, with copies to the Department.)

and Incentives as a motivation to pursue DSM resources.[15] This approach must end.[16] Since each distribution company will no longer have lost base generation revenues, it should not receive the windfall of both LBRs and incentives but instead should build incentives into its PBR mechanism.

DOER's proposal provides an "incentive regulation mechanism to capture the potential of energy efficiency, load management and distributed generation to defer costly upgrades to the distribution system." DOER Plan, p. 50. However, this proposal sets future funding levels for energy efficiency programs "at or above current utility DSM funding levels." *Id.* The Attorney General believes that we should not blindly enter into a restructured electric industry mandating levelized or increased DSM funding.[17] Instead, DSM funding should be set at what is determined as the optimal level to: meet each distribution company's specific T&D constraints; meet the needs of consumers and society; and pursue any desirable market transformation or lost opportunity programs.

RESPECTFULLY SUBMITTED

SCOTT HARSHBARGER
ATTORNEY GENERAL

by: George B. Dean

[15] WMECo proposes to utilize the same LBR and incentive approach (including carrying costs). WMECo, Exh. RAS-2, pp. 4-6. BECo "believes that a state-wide mandated adder for DSM would best promote further development of the existing infrastructure" (BECo, Volume I, p. 76) and that DSM "will continue to be treated as an add-on to base rates, not subject to the price cap formula." *Id.*, Volume II, Appendix II, p. 5. However, BECo proposes to have "further discussions with the Department regarding options for establishing a better incentive mechanism for achieving the simultaneous goal of controlling costs while providing the same (or greater) energy benefits. . . . [which] may be accomplished by: [r]educing or eliminating collection of lost base revenues and [s]ignificantly increasing the net benefit incentive from its current level." *Id.*, pp. 10-11. MECo maintains its present rate mechanism for DSM expenses and does not include DSM in its PBR plan. MECo, Test. of Rotger, p. 4.

[16] LBR recovery was never intended to be anything other than a short-term measure. *Western Massachusetts Electric Company*, D.P.U. 89-260, p. 106 (1990).

[17] It should be borne in mind that DSM funding was put into place to cure market failures, many of which will be cured with the advent of time of use metering and real time pricing. Indeed, it is reasonable to assume that restructuring will bring about a flood of market induced load management.

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ATTACHMENT A

Frank's language on stranded cost charge rate design, *i.e.*, put in as energy charge

dates

search and destroy "power choice"

complete pbr with weasel words and language to TN's original last ¶

footnote 2: Although WMECo does make some attempt to net out the p.6 of 4b & p. 6 4a

sch 1, p. 7

make clear $0.005 is only if dpu is crazy or, notwithstanding reality, convinved there may be some postive number

consumer protection: must set up mechanism for servie/pricing to small customers that is workable and will attract marketers w/o hourly metering

, endorse MECo approach